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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/716,646 | 11/19/2003 | Rasmus Villefrance | 684-011600-US (PAR) | 7660 |
| 2512 | 7590 | 08/23/2007 | | |
| PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824 | | | EXAMINER SMITH, MARCUS | |
| | | | ART UNIT 2616 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/716,646 | Applicant(s) VILLEFRANCE ET AL. | |
| | Examiner Marcus R. Smith | Art Unit 2616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/03/07</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The amendment under 37 CFR 1.132 filed 7/12/07 is insufficient to overcome the rejection of claims 1-26 based upon USC 112, 101, 103 rejections as set forth in the last Office action because: The amendment created more 112 issues for all the claims, it did not overcome the 101 rejection, and 103 rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1 the preamble is unclear. In claim 1, the examiner cannot tell if the system, modules, or data package comprises of a layered structure in line 3. What do you mean when it states "a data package comprising in a layered structure a physical layer comprising"? The applicant should address structure as a module or block or generator. (For example, transport layer module, transport layer block, or transport layer means for.)

Regarding claim 18 the preamble is unclear. The examiner cannot understand the layer structure of data package in lines 1-2. Also what is difference between data link layer and transport layer of claim 18, to claim 1? A computer system has a layer structure; a data structure is based on layer protocols.

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Claim 25 is a hybrid claim. The claim limitations have system limitations and method limitations.

Regarding claim 26 the preamble is unclear. The claim is supposed to refer to the storage medium, but it unclear what is in the storage medium besides a computer program. Limitations relating to the modules, data packages, or message have shown to be part of storage medium or computer program. Ending the preamble as wherein said, does not make sense to the examiner. It seems like the applicant just pick a place to make indentations to start claim limitations. The examiner respectfully asks that the applicant properly rewrite claims and use 37 CFR 1.75 as a reference guide.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. All claims are non-functional descriptive materials, i.e. packet format. Claiming a data package is a data structure per se. Also having the data package being a signal is signal per se, which renders the claim non-statutory.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1,18, and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr (US 5,293,379) in view of Suzuki (US 6,788,706).

with regard to claims 1,18, 23-26 (figure 1, 3, 4):

A system/method for (figure 1)/ (data package (figure 4) / transmitter/receivers (figure 2) / computer program (figure 2, column 4, lines 41-51):

providing data communication between connected modules (column 4, lines 19-30: modem on the LAN A to modem on LAN B),

wherein said modules are adapted to transmit to and receive from one another a data package (column 4, lines 55-67) comprising (for the data package: see figure 4):

in a layered structure a physical layer comprising a first (Ethernet framing, bytes 0-12) and a second segment (Ethernet framing, byte 60) for encapsulating other layers in said data package,

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a data link layer comprising a data link layer control section (IP header bytes 14-30) for carrying data link layer control data and a data section for carrying data for said other layers (bytes 34-58, TCP header and data), and

a transport layer defining a message in said data section, which message is configured according to a transport layer protocol and comprises a payload (packet data, bytes 54-58) and a first header field for format of said payload (protocol), a second header field for start of said payload in said message (fragment offset), a third header field for length of said message (length),

Carr discloses all of the subject matter as described above except for a fourth header field for version of said transport layer protocol, and a fifth header field for message group identity establishing receiving resource format of said payload.

Suzuki teaches a frame handling system that handles packet with headers fields like version, type of service, and PID (which the examiner views as the message group identity) (see figure 4, column 5, lines 38-67) in order to have shorter processing time in a SAR and reduces the sizes circuit which lowers production costs (column 6, lines 1-30).

Therefore it would have been obvious to one having ordinary skill in the art at the time invention was made to transmit and receive frames with versions and PID as taught by Suzuki in the system of Carr in order to have shorter processing time in a SAR and reduces the sizes circuit which lowers production costs.

Response to Arguments

7. Applicant's arguments filed 7/12/07 have been fully considered but they are not persuasive. The applicant failed to overcome 35 USC 112 rejections for all claims. The 101 rejections in claims 18-22, since it is still claiming a data structure. The examiner respectfully disagrees with the applicant about that prior art not teaching the claimed subject matter. Applicant arguments are addressing that the prior art is different from the specification, not claimed subject matter.

(First header field)

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., first header defines a protocol) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(second header field)

In response to applicant's argument that the references fail to show certain features of applicant's invention, the current message is viewed as the message in claims and Carr teachings not distinguishable from the claimed subject matter.

(fifth header field)

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., messages depending on operating system to identify the group) are

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not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus R. Smith whose telephone number is 571 270 1096. The examiner can normally be reached on Mon-Fri. 7:30 am - 5:00 pm every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 571 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MRS 8/08/07

A handwritten signature in black ink, appearing to read "Chau Nguyen", with a stylized, flowing script.

CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600